

direct violation of such binding precedent.¹ Therefore, McComas' position to the contrary must be rejected.

2. McComas also argues that the Commission should abolish the "spousal attribution" doctrine in assessing comparative demerits under the diversification factor. Both the Administrative Law Judge and the Review Board in the Rio Grande proceeding assessed a "decisive diversification demerit" against McComas for her husband's interest in family-owned Station WOSO, San Juan, Puerto Rico. The record in the case showed that Ms. McComas' husband and her father-in-law, both with other local broadcast interests, actively participated in the preparation and prosecution of her application. Therefore, the application of the "spousal attribution" doctrine had special significance there. McComas advances no reasons to justify abandonment of that well-reasoned doctrine and therefore her comments in this regard must also be rejected.

3. United generally supports the Comments of RGB to the effect that the Court's decision in Bechtel v. FCC, 1 F.3d 875 (D.C. Cir., 1993), ("Bechtel II") does not preclude the Commission from applying in comparative cases the factors of local residence, civic participation, minority ownership and broadcast experience on an independent basis outside the scope of the integration

¹ The fact that Congress has mandated a bidding preference for women in PCS auctions, is not relevant to comparative broadcast proceedings, where such a gender preference has been declared invalid under the "equal protection" clause of the Fifth Amendment to the Constitution.

standard. These standards can and should be applied without modification, to all pending cases.

4. McComas, on the contrary, argues that these factors should be modified in a manner designed to enhance her comparative status in the Rio Grande proceeding. For example, all three of the other applicants there, except McComas, proposed city of license residences, and thus McComas was found comparatively inferior on this score. McComas now urges modification of the residence factor to abandon the city of license preference which would redound to her advantage in Rio Grande. Similarly, McComas has no past broadcast experience and is inferior to United on this score in the Rio Grande case. In light of this, she seeks to negative the broadcast experience properly earned by United by urging a new standard to credit only recent broadcast experience and to make other limitations to the detriment of her competitor in the pending comparative case.

In Threshold Communications, 7 FCC Rcd 4554, 71 RR 2d 329, released July 22, 1992, the Commission stated:

"... broadcast experience is not discounted merely because it is noncurrent." Rancho Mirage Radio, 7 FCC Rcd 480, 483 [70 RR 2d 737] (Rev Bd 1992), rev. denied, FCC 92-304, released July 9, 1992 citing New Continental Broadcasting Co., 88 FCC 2d 830, 847 [50 RR 2d 1117] (Rev Bd 1981) ...[broadcast experience acquired 13 years previously in a foreign country, credited]. In Radio Jonesboro, the Commission explained:

Neither the 1965 Policy Statement nor Commission precedent require that broadcast experience must be current in order to warrant any enhancement credit, and we can find no basis for such a requirement. Credit for broadcast experience, unlike civic participation where our concern is awareness and probable responsiveness to community need, is premised upon the recognition that a broadcast background will be helpful. Although technological change may effect the specifics of broadcast operation over time, we do not believe that the benefit of previous broadcast experience is totally lost merely because of time. 100 FCC 2d at 946 (notes omitted)... ."

McComas advances no reasons why the standard for crediting broadcast experience as described in the cases cited above should be changed.

5. Likewise, she advances no valid reasons for awarding a comparative credit to "newcomers." If anything, in today's competitive environment, the applicant with broadcast experience is better qualified to serve the public's needs and therefore should be preferred over a "newcomer" who has no such experience.

6. Over the years, the Commission has developed a well reasoned body of case law in applying its comparative standards in the areas of local residence, civic participation, minority ownership, and broadcast experience which should continue to be validly applied in contested cases. These case precedents and standards should continue to be applied in pending comparative cases especially in proceedings where the evidentiary phase has been concluded.

7. In addition to the above, the Commission should award preference for comparative coverage advantages even in those cases where the advantage is slight and the area already receives multiple other services. Comparative coverage advantages tend to be permanent and any changes in this area remain under the direct control and supervision of the Commission.

8. United also supports the position of RGB that any newly adopted comparative standards should not be applied to pending cases, especially in circumstances where the evidentiary phase of the case had been completed and the case is well along in the decision making process. To apply newly adopted standards in such situations would raise questions of application of ex parte facto law and would significantly further delay already protracted proceedings contrary to the public interest.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, Hazel Y. Goodger, secretary in the law firm of Tierney & Swift, do hereby certify that on the 22nd day of August, 1994, I sent by first-class mail, postage prepaid, copies of the foregoing "Reply Comments of United Broadcasters Company" to the following:

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